(56)

HIGH COURT OF JUDICATURE, CHHATTISGARH AT BILASPUR

Writ Petition No. 2534 of 2003

Petitioner: Shiv Kumar Sahu, S/o Shri Ramadhar Sahu, Aged about 45 years, R/o Janakpur, Thana Bharatpur, District: Koriya (C.G.).

Versus

Respondent: State of Chhattisgarh Through: Collector, Koriya, District: Koriya (C.G.).

POST FOR ORDER ON 24th. SEPTEMBER, 2003

Sd/-
L.C. Bhadoo
Judge

16th September, 2003

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Present:

Shri V.D. Bajpai, Senior Advocate	For the petitioner
Shri Pravin Das, Panel Lawyer	For the State/respondent.

Before: Hon'ble Shri L.C. Bhadoo, J.

O R D E R

(Passed on 17th September, 2003)

1. The petitioner has preferred this petition under Articles 226/227 of the Constitution of India, challenging the order dated 10th July 2003 by which he has been transferred from Sub Treasury, Janakpur to Manendragarh.

2. The petitioner's petition is that he was working as Clerk in the Sub Treasury Office, Janakpur and he has been transferred by the Collector, Koriya from Janakpur to Sub Treasury Manendragarh. The petitioner is an elected President of Chhattisgarh Clerk Grade-III Employees Union of block Janakpur. The petitioner is still holding that post and the State Government of Madhya Pradesh had published a circular dated 29-6-1990 to the effect

that the members of Union should not be transferred. Even the State Government has issued a notification dated 15-5-2002 consisting the transfer policy. According to the policy, the State Government has decided that the ban of transfer will continue till further orders in view of convenience and if any transfer is necessary then the same will be ordered after getting clearance from the Chief Minister. In the present case no clearance has been sought from the Chief Minister.

3. The petitioner's children are studying at Janakpur and he has been transferred to Sub Treasury Manendragarh which is 120 kilometers away from Janakpur, therefore, the impugned order be quashed.

4. Return has been filed on behalf of the State/respondent in which it has been mentioned that the transfer of the petitioner has been made as there were several complaints against the petitioner, therefore, on administrative ground he has been transferred and the overall In-charge of Treasury the Collector has transferred the petitioner. The petitioner had encroached upon the government land and constructed a house over it and the same has been rented out and he is residing in the government accommodation. On a complaint an inquiry was conducted against the petitioner by the Tehsildar which was found correct and a show cause notice was issued to the petitioner upon which the petitioner filed an explanation, therefore, on administrative exigency and in public interest the petitioner has been transferred from Janakpur to Manendragarh, therefore, the petition be dismissed.

5. I have heard the learned counsel for the parties.

6. The transfer is the incident of the service and it has been said by counsel for respondent that the transfer has been made on administrative exigency. The petitioner was working as clerk in the Sub Treasury Office, Janakpur since 1997 thereby he has completed almost six years at one place. Moreover, there were complaints against the petitioner that he after encroaching upon

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the government land constructed a house on that land and the same has been rented out. On inquiry by the Tehsildar the same has been found to be correct.

7. A perusal of the records submitted by the counsel for the respondent/State reveals that there were complaints against the petitioner about the misconduct and he was also not working properly. There was complaint that he was not depositing the money of the persons who were coming to the Treasury for depositing their money through challan.

8. As far as the question of Government's circular that the office bearer of the Union should not be transferred, these are the guidelines that it is not necessary that these guidelines should be adhered in all probability and in all cases the petitioner is not entitled to misuse his position under the garb of these government's circular, particularly, when there were complaints against the petitioner that he is misusing his position and he has encroached upon the government land and constructed a house over it. Moreover, about his working performance and conduct, there were general complaints that he is not depositing the money in the Treasury.

9. Moreover, the petitioner made a representation to the Collector which has been rejected by the Collector. Therefore, in view of the above, there is nothing on record which shows that the transfer of the petitioner has been made on the ground of any malafide or is in violation of any Statutory Rules and moreover, the petitioner has not been made out a case for exercising the powers of judicial review by this Court against his transfer. Therefore, the petition is devoid of merit and the same is liable to be dismissed and it is dismissed.

Sd/-
L.C. Bhadoo
Judge

Barve*

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